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December 6, 2023

Via CM/ECF

The Honorable Joseph A. Marutollo
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East, Room N331
Brooklyn, New York 11201

Re: *Mirkin, et al. v. XOOM Energy, LLC, et al.*; No. 18 Civ. 2949 (ARR) (RER)

Dear Judge Marutollo:

I write on behalf of XOOM in response to the Court's order directing Defendants to submit their position as to whether any further basis for a stay exists. *See* Dkt. 175.

XOOM does not dispute that the Second Circuit's denial of its Rule 23(f) Petition means its request for a stay related to that Petition is no longer applicable. XOOM therefore does not oppose Plaintiff's request that its Motion to Stay Proceedings, Dkt. 166, be denied as moot.

But to be clear, XOOM's position remains that the Class Order was erroneous and the class should be decertified. XOOM therefore intends to file a motion to exclude Plaintiff's experts' testimony as well as a motion for decertification on grounds similar to those raised in its Rule 23(f) Petition at the appropriate time. And although XOOM's motion for decertification will point to deficiencies in the Class Order like those identified in its Rule 23(f) Petition, it will not be a duplication of efforts. A motion for decertification will be subject to a different standard than the Petition (indeed, a more lenient one), will not be bound by a limited appellate record, and will be bolstered by a challenge to Plaintiff's experts' testimony.

XOOM appreciates the Court's careful attention to these matters.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matt Matthews', written over a horizontal line.

Michael D. Matthews, Jr.

CC: All counsel of record (via CM/ECF)